

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KYLE MARCEL PAGE,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 18-2346
	:	
MATTHEW WEINTRAUB,	:	
Defendant.	:	

KEARNEY, J.

June 6, 2018

MEMORANDUM

Kyle Marcel Page, currently incarcerated at SCI Mercer, *pro se* sues the Bucks County District Attorney who supervises the office which prosecuted Mr. Page. Mr. Page seeks civil rights damages under 42 U.S.C. § 1983. He moves to proceed *in forma pauperis*. We grant Mr. Page leave to proceed *in forma pauperis* (ECF Doc. No. 1) but must dismiss his Complaint.

I. Plead facts.

Mr. Page alleges Matthew Weintraub “is a head district attorney in which his department signed off on charges in which District Attorney Alan Garabedian knew were false & perjured by cops.”¹ Mr. Page alleges he has been incarcerated for 15 months.² He alleges “cops planted & fabricated evidence using their badges for injustice [sic] a violation of [his] 4th Amendment.”³

II. Analysis.

A. We grant leave to proceed *in forma pauperis*.

We grant Mr. Page leave to proceed *in forma pauperis* as it appears he is not capable of paying the fees to commence this case.⁴ Mr. Page’s Complaint is subject to 28 U.S.C. § 1915(e)(2)(B)(ii), which requires we dismiss the Complaint if it fails to state a claim. Whether a complaint fails to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii), it is governed by the same

standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6)⁵, which requires we determine whether his complaint contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”⁶ “[M]ere conclusory statements do not suffice.”⁷ As Mr. Page is proceeding *pro se*, we construe his allegations liberally.⁸

B. We dismiss Mr. Page’s civil rights claim.

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.”⁹ Prosecutors, such as District Attorney Weintraub, are entitled to absolute immunity from liability under § 1983 for acts in which “intimately associated with the judicial phase of the criminal process” such as “initiating a prosecution and . . . presenting the State’s case.”¹⁰ District Attorneys and other supervisory prosecutors are likewise entitled to absolute immunity from claims based on their role in pursuing a prosecution on behalf of the Commonwealth.¹¹

As Mr. Page’s claims against Mr. Weintraub are based on conduct occurring in the course of his prosecutorial capacity, his claims are barred by absolute immunity.

III. Conclusion.

In the accompanying Order, we grant Mr. Page leave to proceed *in forma pauperis* and dismiss his Complaint with prejudice. As Mr. Weintraub is absolutely immune, Mr. Page will not be permitted to file an amended complaint, as an amendment is futile.¹²

¹ ECF Doc. No. 2.

² *Id.*

³ *Id.*

⁴ As Mr. Page is a prisoner, he is obligated to pay the \$350.00 filing fee in installments under the Prison Litigation Reform Act. *See* 28 U.S.C. § 1915(b).

⁵ *See Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999).

⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted).

⁷ *Id.*

⁸ *Higgs v. Att'y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

⁹ *West v. Atkins*, 487 U.S. 42, 48 (1988).

¹⁰ *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976).

¹¹ *See Van de Kamp v. Goldstein*, 555 U.S. 335, 348-49 (2009).

¹² *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).